Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-361
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	

COMMENTS OF THE SOUTHWEST COMPETITIVE TELECOMMUNICATIONS ASSOCIATION (SWCTA) ON THE FCC NOTICE OF PROPOSED RULEMAKING

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COMMENTS OF THE SOUTHWEST COMPETITIVE TELECOMMUNICATIONS ASSOCIATION (SWCTA) ON THE FCC NOTICE OF PROPOSED RULEMAKING

Southwest Competitive Telecommunications Association (SWCTA)[1] files the comments in response to the Notice for Proposed Rulemaking adopted by the Federal Communications Commission (the Commission) on December 12, 2001 regarding the Commission's triennial review of the Commission's policies on unbundled network elements (UNEs).

I. Introduction

With this review, the Commission has many aspects of competition to consider. For example, the Commission has already acknowledged that it is required by law to continue to support competition via resale, by UNEs, and by CLEC provided facilities. Much of what the Commission does in this review will be directed at determining the dynamics of competition for many years into the future.

[1] SWCTA, a regional association of 43 telecommunications companies and suppliers also known by the name TEXALTEL, was founded in 1983. SWCTA's purpose is to promote the interests of competitive telecommunications companies in the Southwestern Bell operating region.

Competition has developed based on provisions of the Federal Telecom Act and the Commission's various Interconnection orders. Competitors have implemented business plans, raised capital, and have rolled out services all tailored to provide services to consumers, both business and residential. In this Notice, the Commission has suggested that it might make drastic changes in its approach, from adopting many rules and requirements fostering competition, to a position of eliminating rules and allowing free market forces to reign.

Such a change would mean that those CLECs who have entered under the "old rules" will likely exit the market as they find their niches and protections eliminated. If there are new opportunities created, new entrants will attempt to make them work.

SWCTA suggests that under a laissez-faire approach, the ILECs will remonopolize nearly all of the local exchange market place. Whether CATV providers elect to or can effectively enter this market is unknown, and the extent to which wireless providers can become viable competitors is also unknown. Whether there is adequate spectrum for the wireless competitors to make significant inroad into this market is a matter the Commission's own expertise will have to answer. Satellite based services do not appear to have any chance of economic viability in this market as they do not appear successful in overcoming latency issues from geostationary orbits or the costs of building Low Earth Orbital (LEO) networks.

SWCTA would point out that there has been a tremendous relaxation of regulation of ILECs. Rate of return regulation has been eliminated in most jurisdictions. Various forms of rate flexibility have been adopted allowing ILECs to change many rates with no or minimal regulatory oversight. The offering of new services has largely been deregulated. All of these changes have been justified because of the growth of competition. If the Commission were to chart a course toward less regulation and less competition, then the clock must also be turned back on retail regulation of ILECs, and additional regulatory requirements instituted to avoid monopoly pricing and abuse of customers who have no competitive choice. This is counter to the FTA that utilized wholesale regulation to support retail competition.

Absent effective unbundling requirements, the only customers with competitive choices today, and for the near term future, are the few businesses and residences in high-rise buildings that have been "lit" by competitive fiber cable networks. If the Commission does proceed with fundamental changes in the competitive ground rules, it must understand that it will be eliminating most competition as it exists today, and "start over" with monopoly provision of

telecom services to most customers. We don't believe this course of action is lawful, pursuant to the Federal Telecommunications Act of 1996, and such a course of events is clearly not in the public interest.

As a trade association comprised primarily of smaller competitive providers, SWCTA has utmost interest in the entry and progression path for smaller competitors. First, it is extremely rare that a small new entrant to the competitive telecommunications business has access to capital to enter as facilities-based provider. As testified by the representative of Birch Telecom in Docket No. 24542 at the Public Utility Commission of Texas (Texas Commission), (and which we believe intuitively obvious) the most efficient and economical entry vehicle is to utilize UNE-P to enter the business, win customers, and reach profitability before they can begin to raise the capital required to make significant investment in facilities.[2] This is particularly true with today's capital markets that have been largely closed to CLECs, in part, due to ILEC foot-dragging and attempts to renege on the bargain they entered into and have profited from since 1996. Resale and/or use of UNEs is, in most cases, are the only cost-effective methods of entry available and is the first step on the path of competitive entry and development.

And we would point out that there is never enough competition such that this entry path can, in the public interest, be closed. It is the constant entry of new ventures that keeps the competitive fires burning. The history of the development of long distance competition is that successful firms "rise to the top" and typically merge to form the largest companies in the industry. As mergers eliminate competition at the end of the path, new entry at the beginning of the path keeps competition from become stale or moving into an oligopoly, where there are only a few large providers, and the path to new entry is effectively blocked.

II. General Comments

It is clear that the present competitive environment is not yet conducive to vibrant, sustainable competition. The Commission must determine what additional steps it can take to encourage competition and more strictly and timely enforce the dictates of the Act and the Commission. Looking for means to expand the list of UNEs, and for means to make them more functional is one means of breathing more life back into the competitive industry. We encourage

[2] Public Utility Commission of Texas Docket 24542; Prefiled Direct Testimony of John M. Ivanuska on Behalf of Birch Telecom of Texas Ltd., L.L.P., page 9.

the Commission, in the context of this proceeding, not only to expand the list of UNEs, but also to examine the unnecessary roadblocks and limitations that ILECs have imposed, and to eliminate them. The experience in Texas should be helpful, and we suggest the following:

1. ***UNEs should be available without any requirements for collocation***. In Texas, CLEC entry has been drastically decreased by Southwestern Bell Telephone Company's (SWBT) insistence that CLECs are required to be collocated before they can purchase UNEs. The contract provisions implemented by the Texas Commission have made it clear that collocation is not required, but this is still a roadblock raised by the largest ILEC when CLECs are not fully aware of their rights.[3]
2. ***UNEs should be available without "tying" requirements imposed by the ILEC to buy unnecessary elements in order to obtain the desired elements.*** For example, SWBT is alleged to be requiring CLEC who wish to purchase UNE transport without collocation to purchase UNE Digital Cross Connects (DACCS). This is an unnecessary element in most cases, and since TELRIC prices have not been offered for higher bandwidths, such as OC3, OC12 or OC48, this tying requirement has the result not only of increasing the cost of using UNEs, but of denying or at least delaying their use.
3. ***Eliminate use restrictions on UNEs.*** The Texas Commission has faced this issue and it is partially resolved. For example, in Texas, the ILEC claimed UNE transport must be exclusively used for provision of CLEC local exchange services. The ILEC denied requests for UNE dark fiber where the CLEC had plans to provide a broad range of local transport services, including local services as well as special access type service. The Texas Commission denied SWB's restriction but the ILEC still states at times that it will refuse to allow switched access services to be provisioned over UNE bandwidth.[4]
4. ***Require ILECs to bundle UNEs.*** We remain constantly surprised that regulators and courts have not been more aghast at ILECs suggestions that, although they may be required to provide UNEs, they are not required to connect them. This issue is partially tied to the collocation issue described above, but has been pursued by ILECs to ludicrous extremes. This issue is also faced head on in Unbundled Network Element Platform

[3] Texas 271 Agreement, (December 21, 1999), Attachment 6 UNE-TX, Section 8.2.1 explains how to construct enhanced extended loops (EELs) without collocation.
[4] Public Utility Commission of Texas Docket Number 17922; Second Order on Appeal of Order Nos. 9 and 2 (April 23, 1999).

(UNE-P) forums as ILECs argue that they do not have to connect UNE loops and switch ports under various conditions. This has been a constant restraint on CLECs as they develop and execute business plans – not knowing whether UNE-P and other services they provide that require connection of two or more UNEs will continue to be offered at TELRIC prices. Many CLECs, for example, have refrained from marketing analog UNE-P services in the largest wire centers where the ILEC has been authorized to withdraw the switch port as a UNE. They know they have no viable alternative and do not want to incur the costs of serving customers that they might have to disconnect on relatively short notice. In addition, these CLECs do not want to expose their customers to the prospect of having their local services canceled.

Once telecommunications companies enjoyed the attention of Wall Street and the benefits of investors favoring technology and telecommunications. However, those times are past. Even for companies able to raise capital with 9 or 10 digits, the road to success has been treacherous, and most of those who raised large sums of money have taken on staggering losses and have faced bankruptcy or recapitalization. The fundamental problem is that if a CLEC must incur hundreds of millions of dollars in investment and must ramp up to millions of dollars in recurring expenses before it can begin mass marketing services, then it must attract an enormous volume of customers before it may become profitable. The lag time between investment and profitability has been the undoing of many CLECs. Investors are not willing to provide large sums of capital, subsidize operating losses for many years, and wait patiently before there is a chance of profitability. The other rather obvious conclusion is that if the "critical mass" of customers required for success is, hypothetically, 40%, then there is room for only one such competitor in any one given market area. This is certainly not the vibrant competition envisioned by FTA, the Commission, and others.

The financial crisis surrounding the telecommunications industry points to the obvious, competitors **must** have the customers before they invest in a capital-intensive network. Birch Telecom testified before the Texas Commission that it began deploying switches, but abandoned that business plan early in its evolution. When they become profitable, they will start back down

that road.[5] Birch is one of many CLECs that found it could not support the huge investment of switches and collocations before it had the critical mass of customers, and had to drastically scale back its investments in order to avoid extinction.

There is a misconception that regulatory and public policy makers can "force" CLECs to invest in network by withdrawing essential UNEs. If CLECs cannot raise capital and if essential elements are withdrawn, those CLECs will be forced to exit the market. Allowing CLECs to build a customer base, to plan for appropriate investment, and with time to raise capital, the Commission can be assured that CLECs will invest in facilities. Forcing CLECs to invest by removing critical unbundled network elements will ensure one thing, the extinction of competition. SWCTA suggests that the wholesale market will decide when a UNE is not needed, and demand will disappear. Having said this, we also remind the Commission that even when the day arrives when there are mature, profitable CLECs, there still must be an entry path for the newest entrants. Public policy should never cut off the entry path, or true competition will wither into oligopoly or worse yet, returning to a monopoly environment. Unless public policy swung toward more intense retail regulation, this emerging monopoly/oligopoly would be largely unregulated; free to impose monopoly pricing and abuse on customers who have not choice.

III. Specific Comments to the Notice for Proposed Rulemaking

Should the Commission retain unbundling requirements for switching? What are the continued benefits and burdens of continuing these unbundling requirements? Are there alternative, less burdensome options available to achieve the goals of the Act?

There is a theory that suggests that when there may be enough existing competition for a particular unbundled network element or UNE that it can be withdrawn, and free market forces will make options available for those providers who need them. We agree that the theory has merit but urge that careful examination of the facts be undertaken. Before an unbundled element or UNE is withdrawn, two questions must be answered.

1. Are there enough other providers ***who offer*** the same element to CLECs to constitute a competitive marketplace?

[5]Public Utility Commission of Texas Docket 24542; Prefiled Direct Testimony of John M. Ivanuska on Behalf of Birch Telecom of Texas Ltd., L.L.P.; Pages 6-8.

2. Are the competitive choices to competitors ***ubiquitous*** – available in all locations and under economically similar terms and conditions

If the answer to either of the above questions are "no", then it is imperative the UNE remain available to competitors from the incumbent providers at UNE rates. To do otherwise erects barriers to entry and ensures competition will never achieve more than a small root in infertile soil.

A vivid example of this theory is the UNE switch port. Current Commission policy permits ILECs to withdraw the switch port as a UNE in the largest wire centers for customers with 4 or more lines in the top 50 MSAs, also known as the " UNE carve-out". There are nine of these affected wire centers in four metropolitan calling areas in Texas (Houston, Dallas, Fort Worth and San Antonio). Although it seems a very small number of wire centers would be affected by this withdrawal, those nine wire centers account for a disproportionably large number of business access lines, approximately 500,000 lines.[6] Data has been cited suggesting that numerous CLECs own switches in these nine wire centers and that thus there is enough competition for switch ports to permit withdrawal of the switch port as a UNE. First, the data referred to by the incumbent LEC, Southwestern Bell[7], is grossly in error and overstates the number of switches in existence by a factor of about 400%.[8] Second, and most importantly, none of the CLECs that own switches are seeking to lease ports to other CLECs. In fact, in testimony in Texas Commission Docket No. 24015 indicated that CLECs have refused access to switch ports on their switches.[9] Currently, CLECs do not have the back office infrastructure in place to facilitate leasing out switch ports. The processes needed to permit other CLECs to order ports, to provision the services, to maintain the services, and to bill the services are complex. As far as SWCTA is aware, no CLECs in Texas have undertaken the development that must occur before switch ports can be offered. If SWBT were to exercise the authority currently given to them by the Commission to withdraw the switch port in those nine wire centers, CLECs would

[6]Public Utility Commission of Texas Docket 24542; Direct Testimony of Joseph Gillan on Behalf of the UNE Platform Coalition, AT&T Communications of Texas and McLeod Telecommunications Services, Inc.; Page 19, Table 1.
Public Utility Commission of Texas Docket 24542; Southwestern Bell Telephone Company's Rebuttal Testimony of William L. Fitzsimmons; Figure 3, Page 23
[8] Public Utility Commission of Texas Docket 24542; Prefiled Supplemental Testimony of John M. Ivanuska on Behalf of Birch Telecom of Texas Ltd., L.L.P.
[9] Public Utility Commission of Texas Docket 24542;Prefiled Direct Testimony of John M. Ivanuska on Behalf of Birch Telecom of Texas Ltd., L.L.P; Page 11.

have only two choices; pay whatever "market-based rate" that Bell demanded or discontinue services.

There is also a theory that it is a simple business decision for CLECs to purchase switches and "self provision" ports. This theory does not account for the millions of dollars "self-provisioning" requires. First, Enhanced Extended Links (EELs), which are available in theory, are not economical for analog services. Second, switches must be connected to be functional. This requires economical access to ILEC loops. The use of EELs requires collocation at every ILEC wire center in which the CLEC wishes to offer service. The largest metropolitan service areas in Texas contain over 50 wire centers. There are over 1200 wire centers in the entire state of Texas. Thus, in addition to a class 5 switch, which costs between $1,000,000 and $10,000,000, the CLEC has a tremendously expensive and time consuming task of procuring and paying for up to 1200 collocation spaces, procuring bandwidth to connect the collocation sites, and installing remote switching equipment in order to be prepared to "self provision" switch ports. As the Commission can clearly see, "self-provisioning" through the use of CLEC switches and EELs costs hundreds of millions of dollars in one state alone. This is not an entry path for competition. It is the path to destruction.

It has been alleged that the Texas Commission administered interconnection agreement, the T2A, allows EELs without collocation. We agree that the plain language does, indeed, offer this service. However, the ILEC, Southwestern Bell, continues to erect roadblocks for this mode of interconnection. In querying the entire SWCTA members, it became clear that not one member has been successful in utilizing EELs for mass marketing of analog local exchange services. At present, we have to conclude that economically, it most definitely would add to the costs of providing service and would make provisioning analog residential services uneconomic, and that it may not be functional at all unless CLECs seek and succeed in arbitration of the roadblocks erected by the ILECs.

How should the Commission balance the interest in broadband deployment and competition in its unbundling analysis?

The Commission has expressed concern and sought comment as to how its policies can be crafted so as to encourage broadband deployment. SWCTA offers these comments. First, broadband will be deployed where there is adequate demand for the service. Demand is driven by several factors. Availability and price are important. Content is also important. As there are

more applications for consumers to make use of a broadband service, demand will increase. We applaud the Commission for its desire to move broadband deployment along as quickly as possible. However, we encourage the Commission to recognize market factors and to be prepared to be patient. Service providers have many demands on their capital, and broadband deployment will have to "wait in line" if demand is too low. As soon as competitors reach profitability and are more able to raise capital, they will be able to accelerate deployment. Additionally, we note that the Commission has observed at section 22 of its Notice of Proposed Rulemaking that "Broadband" is generic term that describes a very broad range of technologies that is changing daily. The marketplace will have to decide which technologies will be successful and which services will best suit consumers. Excessive exuberance on the part of policy makers could drive uneconomic decisions.

Another observation is that the best way to encourage deployment is to remove all roadblocks to competition for these services. Other options are rapidly emerging. Many consumers have access to cable modems and wireless internet services are being deployed in rural areas rapidly. Satellite internet services are also available, although there does not appear to be a lot of consumer excitement over that service. And, of course, if DSL competition erodes leaving at best an effective duopoly behind, prices will go up and "take rates" will go down. What value is "deployment" if the target customer class generally cannot afford the service?

There are many different ways that broadband can be deployed. Some technologies available today, such as ISDN BRI and IDSL have fairly long reach (up to 30,000 feet) and can function on most existing cable loops. It is matter of installing routers and marketing the service. Several data LECs or DLECs have made huge investments in infrastructure to offer various DSL services and must now await demand before continuing further rollout of services.

Finally, it must be noted that to the extent the Commission believes additional deployment incentives are appropriate, those incentives were provided earlier this month when the President signed the stimulus bill. One of the key provisions of that bill provided accelerated depreciation that would remove much of the "risk" the ILECs claim to exist with broadband deployment. As a result, the Commission has the double benefit of new economic incentives for broadband deployment without having to take drastic steps that could substantially weaken competition and therefore result in higher prices and lessened innovation.

Should the Commission modify or limit incumbent's unbundling obligations going forward so as to encourage incumbents and others to invest in new construction?

The Commission has recognized that "broadband" is a loosely defined term. Delivery of those services that can be delivered over copper, such as ISDN and the many DSL services, is being accomplished today, and will continue to advance as rapidly as demand drives the economics. Under some ILEC-sponsored definitions, T1s would be considered advanced services even though they are based on 1960's technology.

There are many rural areas where the very long copper loops and the very sparse population makes delivery of DSL service much more costly. And if demand among the rural customers is moderate or low, then delivery of landline copper based broadband is uneconomical. If the Commission wishes to drive the delivery of broadband into areas where it is uneconomical, then some form of subsidization will be required. No amount of deregulation, unbundling requirement removal, or other tweak of the regulatory framework will resolve this problem. In areas where provision of copper based broadband is at least a marginally economic venture; some state regulations that require that broadband be offered in rural areas at the same rates as in urban areas are severe deterrents.

SWCTA is not advocating that universal service or other subsidy systems be established. In some instances, wireless systems are being built to reach areas with radio that are uneconomical to reach with copper or fiber. There are also satellite-based options in most of these areas. As demand grows, the most economic options should evolve as this market matures, as we suggest that the winning option will not always be fiber or copper cable based.

What SWCTA is advocating is that the Commission recognizes that "broadband" will not be universally available at urban prices in the near future, and that it is an evolving family services that will be constantly changing.

We also believe that we read into the Commission's questions and inquiry whether "broadband" stops with copper-based technologies, or whether public policy should be looking toward other technologies, with fiber cable being viewed as the next logical step (we recognize that various coaxial technologies exist, and in some limited situations may be a viable alternative, but we believe it is generally accepted that fiber has tremendously greater potential in most situations).

Certainly examination of today's networks provides insight that fiber-based broadband services will be the next generation. These will be driven by at least two realities:

1) Technology limitations - there are some requirements that exceed the capability of existing copper or coax for delivery. Although "long reach" Ethernet continues to extend the length that high speed Ethernets can operate over copper, those limits are often exceeded and fiber is the best answer.
2) Economic limitations - where legacy copper networks do not exist, or where their capacity is already being fully utilized, and where additional cable of some type must be placed for growth in demand, fiber is usually the most economical choice. Placing copper might work functionally, but fiber is cheaper. When one looks at the gigabit Ethernets being implemented today, and the rapidly growing reliance on data connectivity, one has to conclude that the limitations of copper will be surpassed.

We agree that there are a few services that cannot function at all on copper (or where functionality is so limited as to make the service non-viable for mass offering) and where fiber to the home or business will have to occur before such services can be delivered. Some telemedicine applications, for example, are believed to require gigabit bandwidths and are not functional over copper. Deliver of multichannel digital TV signals over telecommunications networks would also consume such great bandwidths that copper may not function at all. Whether these services mature and demand becomes large enough to drive large-scale fiber deployment remains an unanswered question. As we have stated at many places herein, this will be a demand driven issue over time. While we applaud the Commission's enthusiasm over broadband, we believe that the Commission is powerless to change the basic economic forces at work here, and it should patiently wait on technology and market forces to sort this question out over time. Clearly, restricting CLEC access to newer network elements today, in hopes that provision of fiber to the home and/or fiber to the business may prove economical some day in the future, is disjointed logic that has no connection.

SWCTA suggests that the Commission does not need to concern itself with incenting broadband where the capacity of copper is exceeded. This is a situation where demand is driving the market. Adequate incentives already exist to place fiber and/or other new technologies to meet continued growth in demand. Any suggestions that unbundling requirements should be

lifted, or that other competitive restrictions are appropriate, should be viewed as insulting policy makers' intelligence.

Development of broadband services (whether copper or fiber based) is a combination of

(1) technical innovation (mostly directed at getting greater bandwidths from copper and at developing technologies that are lower in cost),

(2) business innovation (picking technical innovations that work and developing services that are marketable – stimulating demand) and

(3) construction related (raising capital and building facilities).

Today's unbundling requirements have served a role of tremendous importance. CLECs can concentrate their limited resources on innovation (items 1 & 2 above) and do not have to concentrate tremendous resources duplicating what the ILECs have already done, building ubiquitous networks to deliver innovative services. If CLECs had to invest in cable plows before switches, it would probably take as long to implement competitive networks as it did to build the monopoly network that exists today; 125 years. Additionally, the public may well be painfully reminded why regulated monopolies were the answer 65 years ago when they see multiple cable plows "racing" down streets and alleys. SWCTA urges that requirements to unbundled elements have avoided tremendous economic waste by allowing better use of existing facilities and avoidance of rampant duplication. To the extent that CLECs are able to acquire capital to invest in facilities, it would be a disservice to consumers if CLECs were forced to expend its limited resources duplicating the incumbent network (copper cable and circuit switches). Consumers would be much better served if CLECs could continue to get those elements form the ILEC as UNEs, letting CLECs focus its capital on newer facilities that the ILEC does not provide, such as advanced technology switching, high bandwidth networks, etc. so that it can offer advanced services. If essential UNEs, such as switching, digital transmission facilities, etc. are allowed to be withdrawn then CLECs will be forced to make investments in switching or other facilities that largely duplicate the older equipment of the ILEC and will not have resources for more advanced services.

The history of the development of long distance competition is our best example as to how competition can develop in local exchange services. Most entrants started with minimal investments. They found ways to provide services and attract customers and finally invested

profits or raised capital to invest in facilities to drive their costs down. Thousands of mergers then consolidated the long distance business into a handful of large firms. However, there were always new firms entering the business, and their entry and growth maintained the competitive vibrancy of the marketplace. Put more in terms of present law, the situation exists, and will continue to exist, where some CLECs are impaired without certain UNEs and some are not. Although this sounds insultingly obvious, we would point out that the status of the UNE switch port is somewhat similar. By focusing on the limited number of CLECs that own switches, the fact that hundreds of other CLECs that did not own switches and had no other alternatives was not given much consideration.

Incenting investment and innovation through relaxed unbundling requirements is a myth. The Commission appears to have endorsed this myth in its Notice. SWCTA urges the greatest of caution on this subject. First, the only evidence of the truthfulness of this myth is the statements of the large ILECs, who have enormous incentives to promote this myth regardless of its truthfulness. As we are sure is obvious, we are very concerned that permitting the ILECs to remonopolize this family of services is unwarranted. We (and the Commission) are being promised nothing in return. The ILECs have offered no metrics, no verifiable results as to what the Commission will get in return for allowing remonopolization. The Commission is obviously looking at trade offs such as, will broadband services arrive sooner if the ILECs are allowed a monopoly, or will the ILECs, if not under competitive pressure to roll out broadband services, return to their lethargic, monopoly habits of protecting their investment in copper plant as long as possible by delaying the roll out of fiber or other replacement technologies.

SWCTA fails to see any natural economic incentive wherein unbundling will delay broadband implementation by the ILECs. Unbundling should have the effect of increasing the demand on new facilities, and may also have the effect of driving the price for broadband services toward incremental cost at a more rapid rate. The latter point, driving price toward incremental cost is a double-edged sword. Driving the effective price down would reduce the investment incentive **if** all other things were equal. However, pushing the market price down should also have the effect of increasing demand. Thus, the effects of unbundling should be to stimulate demand, which in turn encourage investment. We urge the Commission to require that the perpetrators of the "myth" prove their point, and that the Commission give this issue a very careful "smell" test.

SWCTA urges that the best means of deploying broadband services is to see that this marketplace is as open to competition as possible. Issues of line splitting and line sharing are agonizingly slow in being resolved. If the ILECs no longer have control over when broadband services are rolled out, then the ILECs face a more normal business decision of playing or not playing in the broadband market.

What is the appropriate role of the state commissions in the implementation of unbundling requirements for incumbent LECs?

At present, the role of state commissions is laid out in the FTA and the Commission's various interconnection orders. FTA and the Commission have laid out policy, and the states have carried out that policy, using their unique knowledge of their state-specific needs, policy objectives and public desires to hand craft how competition will be developed within that state. The Commission recognized the reality (as laid out by FTA) that it is ill prepared to handle the thousands of arbitration cases that occur every year, and that it lacks the state-specific knowledge that make state commissions the better means of making individual case decisions.

It could be argued that the present framework encourages a fractured approach to competition – with varying regulations state by state that jeopardizes a consistent national policy. Attached to our comments is a chart, which shows that the development of competition has varied greatly between states where Commissions have proactively supported competition, as compared to those states that have elected a more laissez-faire approach and have been content with the federal minimum requirements. We agree that the present system is not perfect in all regards, but we do believe that it is achieving valuable results and that the present framework should be continued. First, we (collectively, the industry and policy makers) are learning as we move along toward the development of competition. The Commission has learned from various ideas implemented by the states and has implement some of those ideas where it found them to have merit. Some ideas tried at the state level have been unsuccessful and time and experience has given us much greater wisdom (such as the "build-out requirement" incorporated in Texas law in 1995 that made Texas, which is otherwise a very progressive state for competition, the first roadblock to competition). The inconsistency of the present system has largely been limited by Commission rules and actions, reigning in the deviants.

SWCTA urges that the Commission continue to provide federal minimums and guidelines, and that the states continue with their arbitration duties and with wide leeway to add to the federal minimums. We believe that the guidelines and requirements laid out by the Commission to add to the list of UNEs, for example, are an excellent example of effect federal/state cooperation by which the states can add to the UNE list but Commission guidelines layout the conditions that must be met if such additions are made pursuant to FTA.

Granular Impairment Analysis

Lastly, the Commission seeks comment on a granular analysis of the impairment standards, including analysis based on specific services, geographic locations, differing facilities, etc. While we think this approach will have some merit, the idea is premature at this time. First, we are gravely concerned that these suggestions appear to suggest much more litigation and much more detailed investigations in the evaluation of UNEs. Especially to smaller carriers, this is a huge problem. If the Commission intends to suggest considering much greater use restrictions, in that a UNE might be allowed to be used for some services and not for others, then it will have opened a huge new area for adjudication. Development of new services by CLECs, expansions to new areas, or even provision of existing services to new customer classes could all get caught up in litigation and extensive delays if the UNEs underlying those services are not yet approved for the new services or in the new areas. Since the ILEC are recalcitrant vendors at best, we are gravely concerned that this presents far too many huge opportunities for them to delay, obfuscate and run up smaller competitors costs of doing business unnecessarily.

At the present time, competition may be able to recover its recent losses as the economy recovers, but it is unlikely that there will be geographical issues that the FCC needs to address – for several reasons. First, we have suggested that the FCC continue to designate "federal minimums" – those UNEs that are to be available nationally, and allow states to .add to the list when they conclude it is appropriate to do so. This process permits, at least on a state-by-state basis, for UNEs to be custom tailored to geographical needs. Second, as we have stated elsewhere in this proceeding, market forces will work – if there is no longer a need for a particular UNE in a particular area, CLECs will stop purchasing that UNE. The Commission should rest assured that CLECs don't "like" buying services from their biggest competitors, and will stop doing so as soon as the market permits them to do so. Thus, if this process causes the

Commission to err in favor of designating a UNE that is not necessary in some areas, no harm will have been done.

In other recent proceedings, e.g. Broadband Nondominance Proceeding and the Performance Measures NPRM, has discussed at great lengths issues relating to avoid unnecessary administrative burdens. The Commission should be equally, if not more, concerned with increased administrative burdens that a granular analysis could create for CLECs to have access to unbundled network elements. As previously stated, many of SWCTA's members are small carriers. Obviously, this type of litigation would be unattainable by competitive carriers that do not possess deep pockets and expansive legal budgets.

IV. Conclusion

The state of the CLEC industry is tenuous at best at the present time. The goal of the Federal Telecommunications Act was "sustainable" competition. SWCTA suggests that this means numerous competitors in every market that are viable, long-term participants. We would further suggest that to be stable and viable that most competitors would have to be profitable and financially sound. The status today is that most CLECs are still cash flow negative and are dependent on infusions of cash by investors for survival. Those CLECs who do not have loyal investors who are willing to continue such investments are indeed facing hard times, and many of these CLECs have disappeared from the competitive landscape. Indeed, the membership of our trade association has declined by 45%, mostly due to CLECs exiting the market, and we believe that this is reflective of the industry. In addition, many of the surviving CLECs have drastically scaled back their investment and marketing activities. Thus, the shrinkage of competitors in each market place is enormous.

SWCTA urges that the thoughts of relaxing unbundling requirements be put to rest where they belong. It simply is not appropriate to dismiss the competitive industry because the ILECs who have, like much of the industry, scaled back investment due to lagging demand, try to falsely lay the blame on regulation. The current regulatory climate is not the problem.

Respectfully Submitted,

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Attachment A

The FCC Local Competition Report[10]

(Prepared by Joe Gillan, Gillan Associates)

"New Entrant Switched Access Lines Climbed to 17.3 Million"

(page 2)

Behind the Headline

CLEC Lines (thousands)

	Dec 2000	**June 2001**	**Change**
Resale	5,388	4,417	(971)
Facilities	5,735	4,936	(799)
UNE-L	2,436	3,161	752
UNE-P	2,838	4,761	1,923
	16,397	17,235	878

(page 3)

The Emergence of "Two Americas"

State	**Gain**
New York	368,319
Illinois	281,195
Pennsylvania	252,005
Texas	203,545
Michigan	201,580
	1,306,644
Rest of Nation	(429,309)

[10] The presentation was compiled by a comparison of the following information: FCC Local Competition Report, Table 6 – End-User Switched Access Lines Served, May 2001; FCC Local Competition Report, Table 6 – End-User Switched Access Lines Served, February 2002.

Attachment B

CLECs Are Struggling

Prepared by: AT&T Communications, January 2002

Due to the difficulty of entering local markets, many of the CLECs are operating under financial stress, and some have already succumbed. CLEC troubles include:

Bankruptcies & Closures

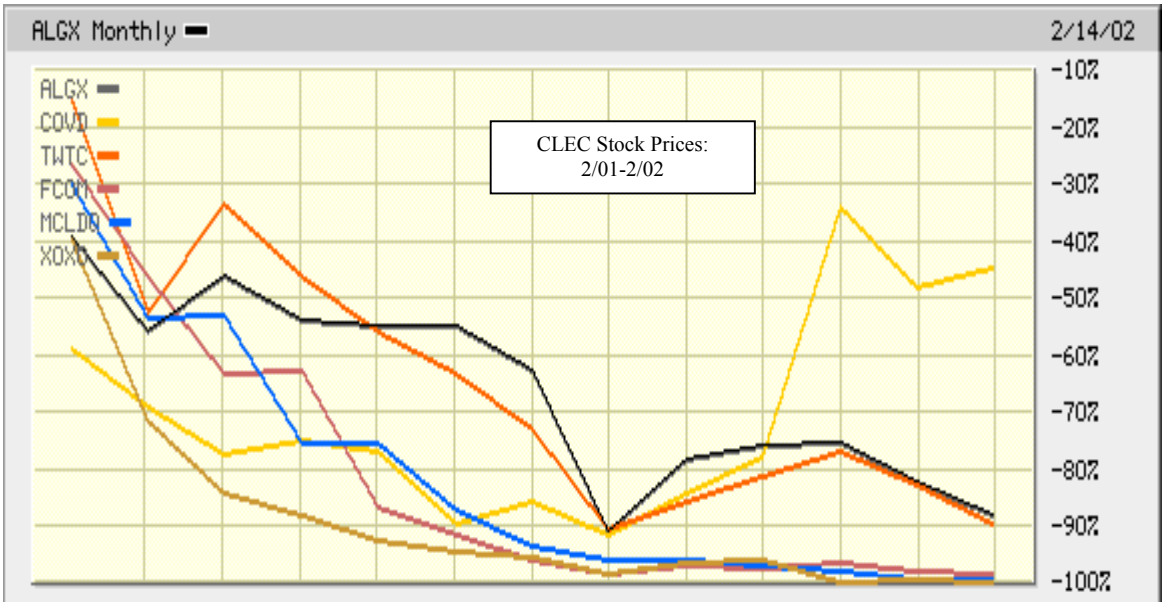
- McLeodUSA – Chapter 11 (1/31/02)
- Global Crossing – Chapter 11 (1/28/02)
- Winstar - After an auction for Winstar's assets failed to produce a sufficient bid, the company announced that it intends to go into Chapter 7 and liquidate its assets (12/11/01)
- McLeod USA - Restructures to reduce debt but may seek Chapter 11 bankruptcy protection (12/04/01)
- Net2000 – Chapter 11 (11/16/01)
- Startec Global Communications - Restructuring and may seek Chapter 11 bankruptcy protection (11/15/01)
- Rhythms – Will shut down 9/24/01 (9/24/01)
- BroadRiver Communications – Shutting down service effective 9/15/01 (9/7/01)
- Covad – Chapter 11 (8/16/01)
- Rhythms – Chapter 11 (8/2/01)
- Convergent Communications – Announced it's liquidating its assets (6/21/01)
- Teligent – Chapter 11 (5/21/01)
- 2nd Century – Closed its doors (5/1/01)
- @Link – Chapter 11 (4/25/01), announced it's liquidating its assets (5/8/01)
- Convergent Communications – Chapter 11 (4/19/01)
- Winstar – Chapter 11 (4/18/01)
- Actel – Chapter 11 and shut down its operations (4/12/01)
- Vitts – Announced it would shut down operations by March 1 (1/23/01), secured additional funding (1/30/01), declared Chapter 11 (2/8/01), operations scheduled to cease on 5/9/01 (4/9/01)
- Pathnet – Chapter 11 (4/2/01)
- Advanced Radio Telecom – Chapter 11 (3/30/01)
- NorthPoint – Chapter 11 (1/17/01), sold majority of assets to AT&T (3/22/01), shut down service (3/28/01)
- MetStream – Ceased operations (3/23/01)
- e.spire – Chapter 11 (3/22/01)
- Onvoy – Announced it's exiting the DSL business citing lack of profitability, will focus on providing T1 conncections (3/5/01)
- Omniplex Communications – Chapter 11 (2/28/01)
- ConnectSouth – Decided to cease all operations (2/23/01)
- Vectris – Chapter 11 (1/18/01)
- Jato – Ceased all operations (12/30/00)

- Digital Broadband Communications – Chapter 11 (12/27/00), network shut down (1/12/01)
- Maverix.net – Decided to sell its assets or shut down completely by YE00 (12/18/00)
- FutureOne – Completed sale of its ICP holdings to focus on its telecommunications infrastructure engineering and construction services (11/14/00)
- ICG – Chapter 11 (11/14/00)
- Picus Communications – Chapter 11 (11/7/00)
- Prism Communication Services – Terminated services in November (11/6/00)
- UBNetworks – Chapter 11 (10/31/00)
- NETtel – Chapter 11 (9/28/00), converted to Chapter 7 liquidation (10/24/00)
- Columbia Telecommunications d/b/a/ Axessa – Chapter 11 (8/16/00)
- American MetroComm – Chapter 11 (8/16/00)
- GST – Chapter 11 (5/17/00)
- OpTel – Chapter 11 (10/29/99)

Scaling Back Services

- McLeodUSA – Selling directory publishing unit (1/22/02)
- Teligent – Cut 7,000 of its 11,000 customers (11/16/01)
- McLeodUSA – Abandoning plans for national network (10/3/01)
- Teligent – Selling its domestic fixed wireless assets (8/27/01)
- OpTel – Plans to cut service to 12 markets (8/20/01)
- CoreComm – Plans to discontinue DSL service in central Ohio (8/7/01)
- FirstWorld (now Verado) – Sold its DSL subscriber base as part of its plan to divest itself of non-core business assets (7/27/01)
- Teligent – Will discontinue service in some markets (7/6/01)
- DSL.net – Will discontinue service to 250 central offices (6/29/01)
- Covad – Will shut down its subsidiary, BlueStar's, network, reducing its service area (6/25/01)
- ionex telecommunications – Has suspended plans to expand in the West and upper Midwest and is not adding new customers in some of its service areas (6/22/01)
- Rhythms – Will concentrate on its 33 largest markets and suspend service in 9 markets and approximately 150 COs (6/14/01)
- Mpower – Will discontinue service in 12 of its 40 markets (5/18/01)
- Teligent – Plans to shut down service in 11 of its 34 markets (5/11/01)
- RCN – Will pull out of Oregon (5/7/01)
- XO Communications – Will cut its European project and slow down US expansion plans (4/26/01)
- @Link – Plans to discontinue service to Indiana, Michigan, Minnesota, Ohio, and some Illinois and Wisconsin markets effective 5/31/01 (4/25/01)
- Winstar – Halted domestic and international network expansion for 2001 (4/5/01)
- Everest Connections – Scaling back fiber-optic network expansion plans (4/4/01)
- New Edge Networks – Discontinuing service in Georgia and Florida (2/22/01)
- Covad – Will shut 60 more offices, including Western New York (2/18/01)
- 2nd Century – No longer serving Philadelphia (2/21/01) or San Antonio (1/29/01)
- Net2000 – Postponed its Phase 3 network expansion plans by at least one year (1/19/01)

- Vectris – Discontinued service as of 1/31/01 to all markets in Arkansas, Kansas, Michigan, Missouri, Ohio, Oklahoma, and Wisconsin and some markets in Illinois, Indiana, and Texas (1/18/01)
- Rhythms – Will concentrate on serving its 40 largest markets rather than expanding nationwide (1/16/01)
- FairPoint Communications Solutions – Stopped adding new customers in Southeast and Southwest to focus on Northeast and Northwest, closed 8 district sales offices and 15 other offices (1/5/01)
- Covad – Plans to close 200 central offices (12/29/00)
- FairPoint Communications Solutions – Closing 2 operation centers and reducing its sales offices from 41 to 15 (12/18/00)
- RCN – Put plans to expand into new markets on hold (12/15/00)
- Adelphia – Selling subscribers in non-strategic areas (12/18/00), reduced expansion plans from 175-200 markets by the end of 2001 to just 75-80 markets (12/14/00)
- Covad – Lowered YE01 line installation estimates from 650,000 to 440,000-460,000 (12/12/00)
- HarvardNet – Will leave the DSL market to focus on Web-hosting (12/6/00)
- DSL.net – Slowing expansion into new areas to focus on increasing revenue in its current markets (12/4/00)
- Covad – Limiting deployment to around 2,000 central offices (11/27/00)
- Teligent – Plans to stop selling services to new retail customers in 9 of its 43 markets (11/9/00)
- 2nd Century – Instead of reaching 35 cities by YE00 as planned, will focus on its current 15 markets (9/11/00)
- Jato – Reducing operations in Rocky Mountain region, Southwest, and parts of Midwest (8/23/00)



Staff Reductions

- Broadwing – Cut 900 jobs, 15% of workforce (11/29/01)
- Teligent - Cut 300 jobs, 60% of its workforce (11/16/01)
- Net2000 – Cut 400 jobs (10/22/01)
- DSL.net – Will eliminate 86 jobs (10/16/01)
- McLeodUSA – Layed off 17 workers (10/12/01)
- Arbros Communications – Announced workforce downsizing (10/11/01)
- McLeodUSA – Will reduce workforce by 15% (10/3/01)
- XO Communications – Will lay off 600 employees (10/2/01)
- Net2000 – Will cut 300 workers (9/28/01)
- ITC-DeltaCom – Will cut 20% of its staff (9/18/01)
- BroadRiver Communications – Fired remaining 36 employees (8/31/01)
- Pac-West Telecomm – Cut 200 employees (8/28/01)
- Telergy – Laid off 150 workers (8/14/01)
- Rhythms – Let 700 employees go (8/10/01)
- Focal Communications – Cut 175 jobs (8/8/01)
- Global Crossing – Will eliminate over 2,000 jobs (8/3/01)
- Winstar – Will cut about 950 employees (8/3/01)
- CoreComm – Will cut 110 positions (7/13/01)
- BroadRiver Communications – Laid off 60-person sales staff (7/01)
- DSL.net – Will cut 90 employees (6/29/01)
- Covad – 400 employees from BlueStar subsidiary to be laid off (6/25/01)
- BTI – Eliminated 200 positions (6/4/01)
- McLeodUSA – Will cut 5% of its workforce (5/30/01)
- Mpower – Will cut 275 jobs (5/18/01)
- NAS – Will eliminate about 150 positions (5/11/01)
- Teligent – Will cut 900 employees (5/11/01)
- Rhythms – Will eliminate 400 jobs (5/9/01)
- CoreComm – Plans to cut 210 employees (5/8/01)
- 2nd Century – Let 121 employees go in preparation for closure (5/1/01)
- Convergent – Will cut around 400 workers (4/17/01)
- Winstar – Cut 2,000 workers (4/5/01)
- Level 3 – Cut 325 employees (4/3/01)
- Advanced Radio Telecom – Laid off 90% of its staff (3/30/01)
- NorthPoint – Laid off 700 workers (3/30/01)
- Convergent – Laid off 22% of its workforce (2/29/01)
- Birch Telecom – Eliminated 55 jobs (2/23/01)
- New Edge Networks – Cut 55 employees (2/22/01)
- CoreComm – Cut 175 jobs (2/16/01)
- Teligent – Fired 200 employees (2/15/01)
- ALLTEL – Will eliminate 1,000 jobs (2/15/01)
- Vitts – Laid off 270 of its 300 employees (1/22/01)
- Net2000 – Reduced workforce by 10% (1/19/01)
- Rhythms – Cut 450 employees (1/16/01)

  - BTI – Cut 70 workers (1/15/01)
  - Adelphia – Reduced its staff by 8% (1/11/01)
  - ICG – Will eliminate 500 jobs by 1/31/01 (1/09/01)
  - FairPoint Communications – Laid off 360 more workers (1/5/01)
  - Covad – Eliminated 400 more jobs (12/29/00)
  - 2nd Century – Cut 172 more jobs (12/22/00, corrected 1/2/01)
  - Maverix.net – Cut 80% of its staff (12/18/00)
  - FairPoint Communications – Eliminated 365 jobs (12/18/00)
  - Digital Broadband Communications – Laid off 450 of its 526 employees (12/15/00)
  - Vectris – Will lay off at least 184 workers (12/12/00)
  - NorthPoint – Laid off 248 employees (12/7/00)
  - HarvardNet – Will lay off 280 workers (12/6/00)
  - Covad – Will cut 400 jobs (11/27/00)
  - New Edge Networks – Eliminated 135 jobs (11/13/00)
- Birch Telecom – Laid off 138 employees (11/13/00)
- Teligent – Eliminated 780 jobs (11/9/00)
- NAS – Eliminated 145 positions (11/8/00)
- Onvoy – Cut 25 employees (11/3/00)
- UBNetworks – Laid off 80 workers (10/26/00)
- Picus Communications – Laid off about 30 workers (9/00)
- 2nd Century – Eliminated 130 jobs (9/11/00)
- Jato – Laid off 350 workers (8/23/00)